Pensions, Savings and Investment Policy on September 17, 1983. The Treasury Department testified in opposition to the legislation at that hearing, but since that time the legislation has been modified so that the Treasury Department no longer has any objection to the legislation of which I am aware. According to the Joint Committee on Taxation, the revenue loss associated with the legislation should be minimal, less than $10 million a year.

The President's tax reform proposal, as well as the other tax reform plans which have been put forth, recognize the need to encourage our private pension system and to encourage the use of savings for retirement security purposes. The supplemental retirement benefit proposal we are proposing does precisely that. In the interest of enhancing retirement income security for our working men and women, we urge all our colleagues to consider cosponsoring and supporting this legislation.

Mr. President, I ask that the text of the Supplemental Retirement Benefit Act of 1985 be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1814

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONTRIBUTIONS TO COST-OF-LIVING ARRANGEMENTS UNDER DEFINED BENEFIT PLANS

(a) IN GENERAL.—Section 415(k) of the Internal Revenue Code of 1954 (relating to special rules for limitations on benefits and contributions under qualified plans) is amended by adding at the end thereof the following new paragraph:

"2. Contributions to provide cost-of-living protection under defined benefit plans.—

"(A) IN GENERAL.—In the case of a defined benefit plan which maintains a qualified cost-of-living arrangement—

"(i) any contribution made directly by an employee under such arrangement shall—

"(I) not be treated as an employee contribution for purposes of subsection (c), but

"(II) shall be so treated for purposes of subsection (e), and

"(ii) any benefit under such arrangement which is allocable to an employer contribution which was transferred from a defined contribution plan and to which the requirements of subsection (c) were applied shall, for purposes of subsection (b), be treated as a benefit derived from an employee contribution (and subsection (c) shall not again apply to such contribution by reason of such transfer).

"(B) A QUALIFIED COST-OF-LIVING ARRANGEMENT.—For purposes of this paragraph, the term 'qualified cost-of-living arrangement' means an arrangement under a defined benefit plan which—

"(i) indexes a benefit provided under such plan, or a separate plan subject to the requirements of section 412, and

"(ii) meets the requirements of subparagraphs (C), (D), and (E) and such other requirements as the Secretary may prescribe by regulations.

"(C) DETERMINATION OF AMOUNT OF BENEFIT.—An arrangement meets the requirement of this subparagraph only if the cost-of-living adjustment of participants is based—

"(i) on increases in the cost-of-living after the annuity starting date, and

"(ii) on average cost-of-living increases determined by reference to 1 or more indexes prescribed by the Secretary, except that the arrangement may provide that the increase for any year will not be less than 3 percent of the primary retirement benefit.

"(D) ARRANGEMENT ELECTIVE; TIME FOR ELECTION.—An arrangement meets the requirements of this subparagraph only if it is elective and it provides that such election may be made in—

"(i) the year in which the participant—

"(I) attains the earliest retirement age under the defined benefit plan, or

"(II) separates from service, or

"(ii) both such years.

"(E) ANTIDISCRIMINATION REQUIREMENTS.—

"(i) IN GENERAL.—An arrangement meets the requirements of this subparagraph only if the arrangement does not discriminate in favor of highly compensated employees as to eligibility to participate.

"(ii) PATTERN OF ABUSE.—Notwithstanding clause (i), an arrangement shall not meet the requirements of this subparagraph if the Secretary finds that a pattern of abuse exists with respect to participation.

"(F) SPECIAL RULES FOR APPLICATION OF SUBPARAGRAPH (E) IN THE CASE OF KEY EMPLOYEES.—An arrangement shall not meet the requirements of subparagraph (E) if—

"(i) in the case of an arrangement under a top-heavy plan (within the meaning of section 416(g)), any key employee is eligible to participate, or

"(ii) in the case of an arrangement under any other plan, any key employee other than an officer described in section 416(i)(1)(A)(i) is eligible to participate.

For purposes of this subparagraph, the term 'key employee' has the meaning given such term by section 416(i)(1).".

(b) CERTAIN TRANSFERS TO DEFINED BENEFIT PLANS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF LUMP-SUM DISTRIBUTION.—Section 402(e)(4) of the Internal Revenue Code of 1954 (relating to special rules for lump-sum distributions) is amended by adding at the end thereof the following new subparagraph:

"(N) TRANSFERS TO COST-OF-LIVING ARRANGEMENT NOT TREATED AS DISTRIBUTION.—For purposes of this subsection, the balance to the credit of an employee shall not include any amount transferred from a defined contribution plan to a qualified cost-of-living arrangement (within the meaning of section 415(k)(2)) under a defined benefit plan.".

(c) CONTRIBUTIONS NOT DEDUCTIBLE.—Paragraph (2) of section 219(e) of the Internal Revenue Code of 1954 (defining qualified voluntary employee contribution) is amended by adding at the end thereof the following new subparagraph:

"(D) CONTRIBUTIONS TO QUALIFIED COST-OF-LIVING ARRANGEMENTS.—The term 'qualified voluntary employee contribution' shall not include any contribution by an employee to a qualified cost-of-living arrangement (within the meaning of section 415(k)(2)(B)).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 1985.

Mr. HEINZ. Mr. President, I am pleased to join with Senator CHAFEE in introducing legislation to encourage employers and employees to fund annual cost-of-living adjustments for private pension plans. This legislation recognizes the need to maintain the purchasing power of retirement benefits after retirement has occurred. I think it offers a creative approach to a difficult problem.

Inflation can be a source of substantial financial insecurity for older Americans. Only a portion of the retirement income the elderly receive is adequately protected against inflation. Social Security and other Federal retirement benefits are automatically adjusted each year to maintain their purchasing power, but these benefits provide less than half of the income the elderly receive. Benefits from private pension plans in particular are unlikely to be adjusted regularly for inflation. A survey of private pension plans conducted in 1981 showed that only 3 percent of the plans provided for automatic annual benefit increases after retirement. All of the plans surveyed had provided some ad hoc benefit increase, but the average increase amounted to only 3 to 4 percent per year, in a time of double-digit inflation.

Fixed pension benefits that are adequate at the start of retirement can become inadequate after several years of inflation. Today, most working Americans can look forward to more than 15 years of retirement after reaching age 65. After 15 years of only 5 percent inflation, pension benefits will be worth only half of what they could be worth at retirement. This decline in value can cause a substantial loss in purchasing power for a retiree depending heavily on these benefits in their later years.

The legislation we are introducing today would provide a mechanism for the inflation protection of private pension benefits. Employees and employers would be encouraged to participate jointly in preparing for the cost of supplemental retirement benefits to compensate for inflation. Senator CHAFEE has worked closely with the Treasury Department in preparing this bill to ensure that it complements our overall retirement income policy, and that it does not reduce tax revenues. I commend him on the fine work he has done. This bill can be an important step toward improving the adequacy of the retirement benefits provided through our voluntary employer-sponsored pension system. I urge my colleagues to join with us in this effort.

By Mr. HATCH (for himself and Mr. KENNEDY):

S. 1815. A bill to prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce; to the Committee on Labor and Human Resources.

POLYGRAPH PROTECTION ACT

Mr. HATCH. Mr. President, today Senator KENNEDY and I are introducing the Polygraph Protection Act of 1985, a bill which will afford needed protection for American working men and women by prohibiting the use of

truth verification devices in the private sector.

While there appears to be little consensus of opinion regarding lie detector tests, there seems to be agreement on one issue. Lie detection is by no means a science: it is at best a craft. As a result, the validity and reliability of these tests often depend in large part on the competency, professionalism, and integrity of the test administrator. The potential for human error is high, especially when the test is given in a short period of time, and research has shown that even the most respected and reputable polygraphers make mistakes, mistakes which can unjustly condemn and stigmatize an individual for life, rob him of his livelihood, or bar him from just advancement.

Despite the numerous concerns with the accuracy and merit of these tests, their use is increasing. In 1983, the Congressional Office of Technology Assessment observed that polygraph examinations are being used not just for criminal investigations but also for preemployment screening, periodic screening of employees to control crime, and to recommend promotion. The Office estimated that more than 1 million polygraph tests are being administered each year in the private sector alone.

What makes this statistic so disturbing is the fact that even proponents of polygraph testing admit that there is probably a 5-percent rate of error in the analysis of test results. Consequently, even under the best of circumstances, some 50,000 workers may have their employment opportunities terminated, curtailed, or blocked each year due not to their own work record but due to employer reliance on the results of invalid polygraph tests. In addition, there is evidence that in several instances, test results are deliberately manipulated or annualized to justify a predetermined decision—a decision not to hire a qualified applicant or a desire to fire an innocent employee.

I recognize that more than half of the States in this country, including my own State of Utah, have sought to offer some protection against polygraph test abuse. Yet, as one would expect, there is little uniformity in the content of these State laws. While some States bar polygraph examinations entirely, others only prohibit employers from requiring employees or applicants to submit to such tests. In these latter instances the consequences can be quite severe. Often, it is quickly learned that a refusal to take a test is considered commensurate with failing it. Moreover, some employers also avoid State restrictions by hiring employees in States permitting the use of polygraphs and then transferring these employees to States where their use is barred. In sum, it is time for the Federal Government to act and establish a uniform means for protecting all working men and women regardless of geographical location.

At the same time, the bill does recognize that the use of polygraph tests may have a limited role where they are administered in an objective, professional, and complete manner. Consequently, the prohibitions in the bill do not apply to Federal, State or local governments. Moreover, the prohibitions do not extend to the employees of defense contractors who have access to classified information.

The legislation we are introducing today attempts to strike a legitimate balance between governmental need and the rights of working men and women. I do recognize, however, that as drafted the bill does not address arguments from employers that polygraph tests are the only effective means at their disposal for ascertaining the veracity of employment applications, locating drug or similar types of abuse among employees, or rooting out crime in their work force.

It is impossible for me at this time to fully evaluate the merit of these assertions, but there are still too many examples of polygraph test abuse for Congress not to move forward to establish some uniform protection for working men and women. It is my hope that in the ensuing months we will be able to work with all interested parties and develop legislation that will protect the rights of all employees in a logical, effective, and enforceable manner.

I ask unanimous consent that the bill be printed in its entirety at the conclusion of my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1815

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Polygraph Protection Act of 1985".

PURPOSE

SEC. 2. (a) PURPOSE.—It is the purpose of this Act to prevent the denial of employment opportunities based on the use of lie detectors designed to detect deception or verify the truth of statements.

(b) CONSTRUCTION.—This Act shall be construed to prohibit the use of all such lie detectors on any employee, agent, prospective employee, and prospective agent.

PROHIBITION ON LIE DETECTOR USE

SEC. 3. No employer or any other person engaged in or affecting interstate commerce, nor any agent or representative thereof—

(1) may directly or indirectly require, request, suggest, permit or cause any employee, agent, prospective employee, or prospective agent to take or submit to any lie detector that or examination for any purpose;

(2) may use, accept, or refer to the results of any lie detector test or examination of any employee, agent, prospective employee, or prospective agent for any purpose; or

(3) may—

(A) discharge, dismiss, discipline in any manner, or deny employment or promotion to; or

(B) threaten to discharge, dismiss, discipline, or deny employment or promotion to, any employee, agent, prospective employee, or prospective agent who refuses, declines, or fails to take or submit to any lie detector test or examination.

NOTICE OF PROTECTION

SEC. 4. (a) NOTICE OF PROTECTION.—The Secretary of Labor shall prepare and have printed a notice setting forth information necessary to carry out the purpose of this Act.

(b) POSTING REQUIRED.—The notice required by this section shall be posted at all times in conspicuous places upon the premises of every employer engaged in any business in or affecting interstate commerce.

RULES AND REGULATIONS

SEC. 5. In accordance with the provisions of subchapter II of chapter 5 of title 5, United States Code, the Secretary of Labor shall issue such rules and regulations as may be necessary or appropriate to carry out this Act.

AUTHORITY OF THE SECRETARY OF LABOR

SEC. 6. The Secretary of Labor shall—

(1) make such delegations, appoint such agents and employees, and pay for such technical assistance on a fee for service basis, as the Secretary deems necessary to assist in carrying out the functions prescribed by this Act;

(2) cooperate with regional, State, local, and other agencies, and cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in carrying out the purpose of this Act; and

(3) make investigations and require the keeping of records necessary or appropriate for the administration of this Act in accordance with the powers and procedures provided in sections 9 and 11 of the Fair Labor Standards Act of 1938 (29 U.S.C. 209 and 211).

ENFORCEMENT PROVISIONS

SEC. 7. The provisions of this Act shall be enforced in accordance with the powers, remedies, and procedures provided in sections 11(b), 16, and 17 of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(b), 216, and 217). Amounts owing to a person as a result of a violation of this Act shall be deemed to be unpaid minimum wages or unpaid overtime compensation for purposes of sections 16 and 17 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216 and 217).

EXEMPTIONS

SEC. 8. The provisions of this Act shall not apply with respect to—

(1) any individual who is employed by the United States Government, a State government, city, or any political subdivision of a State or city; or

(2) personnel of contractors of the Department of Defense with access to classified information.

Personnel described in clause (2) may be subject to the polygraph program authorized in the Department of Defense Authorization Act, 1986.

DEFINITIONS

SEC. 9. As used in this Act—

(1) the term "person" means any natural person, firm, association, partnership, corporation, or any employee or agent thereof;

(2) the term "lie detector" includes but is not limited to any polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical, electrical, or chemical) which is used, or the results of which are used, for the purpose of detecting deception or verifying the truth of statements; and

(3) the term "employer" includes an employment agency.

EFFECTIVE DATE

SEC. 10. The provisions of this Act shall take effect on the date of enactment of this Act, except that the provisions of section 4 shall take effect six months after the date of enactment of this Act.

ADDITIONAL COSPONSORS

S. 384

At the request of Mr. BUMPERS, the name of the Senator from Tennessee [Mr. GORE] was added as a cosponsor of S. 384, a bill to authorize appropriations for a highway demonstration project on U.S. Highway 71 between Alma, Arkansas, and Bella Vista, Arkansas, that would increase the number of lanes on this segment of the route from two to four.

S. 1543

At the request of Mr. MATHIAS, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 1543, a bill to protect patent owners from importation into the United States of goods made overseas by use of a United States patented process.

S. 1647

At the request of Mr. LAUTENBERG, the name of the Senator from Hawaii [Mr. MATSUNAGA] was added as a cosponsor of S. 1647, a bill to amend the Tariff Act of 1930 to enhance the protection of intellectual property rights.

S. 1707

At the request of Mr. SIMON, the names of the Senator from New Jersey [Mr. BRADLEY], and the Senator from Tennessee [Mr. GORE] were added as cosponsors of S. 1707, a bill to authorize the President to present a gold medal to the parents of Father Jerzy Popieluszko.

S. 1775

At the request of Mr. DODD, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of S. 1775, a bill to authorize a multifamily housing preservation loan program.

S. 1787

At the request of Mr. BURDICK, his name was withdrawn as a cosponsor of S. 1787, a bill to amend the Federal Election Campaign Act of 1971 to provide for the public financing of Senate general election campaigns.

SENATE JOINT RESOLUTION 2

At the request of Mr. HATCH, the name of the Senator from New Mexico [Mr. DOMENICI] was added as a cosponsor of Senate Joint Resolution 2, a joint resolution proposing an amendment to the Constitution of the United States relating to voluntary silent prayer or reflection.

SENATE JOINT RESOLUTION 74

At the request of Mr. THURMOND, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of Senate Joint Resolution 74, a joint resolution to provide for the designation of the month of February, 1986, as "National Black (Afro-American) History Month."

SENATE JOINT RESOLUTION 170

At the request of Mr. SIMON, the names of the Senator from Georgia [Mr. NUNN], and the Senator from Mississippi [Mr. STENNIS] were added as cosponsors of Senate Joint Resolution 170, a joint resolution to designate the month of March 1986 as "Music In Our Schools Month."

SENATE CONCURRENT RESOLUTION 39

At the request of Mr. DODD, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of Senate Concurrent Resolution 39, a concurrent resolution expressing the support of the Congress for Costa Rica's neutrality and urging the President to support such neutrality.

SENATE CONCURRENT RESOLUTION 72

At the request of Mr. SIMON, the names of the Senator from Wyoming [Mr. WALLOP], the Senator from Arkansas [Mr. BUMPERS], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Oklahoma [Mr. BOREN], the Senator from New Jersey [Mr. BRADLEY], and the Senator from Indiana [Mr. QUAYLE] were added as cosponsors of Senate Concurrent Resolution 72, a concurrent resolution expressing the sense of Congress concerning human rights in Poland.

SENATE CONCURRENT RESOLUTION 78

At the request of Mr. BRADLEY, the names of the Senator from Oregon [Mr. HATFIELD], the Senator from Vermont [Mr. STAFFORD], the Senator from Michigan [Mr. RIEGLE], and the Senator from Missouri [Mr. DANFORTH] were added as cosponsors of Senate Concurrent Resolution 78, a concurrent resolution in support of universal access to immunization by 1990 and accelerated efforts to eradicate childhood diseases.

SENATE CONCURRENT RESOLUTION 81

At the request of Mr. SIMON, the name of the Senator from Maryland [Mr. MATHIAS] was added as cosponsors of Senate Concurrent Resolution 81, a concurrent resolution requesting the President to begin talks with the Government of the Soviet Union to establish a United States-Soviet Union student exchange for peace program.

SENATE CONCURRENT RESOLUTION 83

At the request of Mr. D'AMATO, the names of the Senator from North Dakota [Mr. ANDREWS] and the Senator from Iowa [Mr. HARKIN] were added as cosponsors of Senate Concurrent Resolution 83, a concurrent resolution expressing the sense of the Congress that Federal tax reform legislation not take effect until its date of enactment, but in no case earlier than July 1, 1986.

SENATE RESOLUTION 250—TO PAY A GRATUITY TO ALBEN A. FLATT

Mr. MATHIAS, from the Committee on Rules and Administration, reported the following original resolution; which was placed on the calendar.

S. RES. 250

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Alben A. Flatt, widower of Jeannine H. Flatt, an employee of the Senate at the time of her death, a sum equal to eight months' compensation at the rate she was receiving by law at the time of her death, said sum to be considered inclusive of funeral expenses and all other allowances.

SENATE RESOLUTION 251—TO PAY A GRATUITY TO PAULINE WASHBURN

Mr. MATHIAS, from the Committee on Rules and Administration, reported the following original resolution; which was placed on the calendar.

S. RES. 251

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Pauline Washburn, widow of Elwood C. Washburn, an employee of the Senate at the time of his death, a sum equal to ten and one-half months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

SENATE RESOLUTION 252—TO PAY A GRATUITY TO REILLY P. FLAHERTY AND ARDELLA M. S. FLAHERTY

Mr. MATHIAS, from the Committee on Rules and Administration, reported the following original resolution; which was placed on the calendar.

S. RES. 252

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Reilly B. Flaherty and Ardella M. S. Flaherty, parents of Terrence R. Flaherty, an employee of the Senate at the time of his death, a sum to each equal to one-half of one years' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

SENATE RESOLUTION 253—TO PAY A GRATUITY TO STEPHANIE L. ROGERS SMITH

Mr. MATHIAS, from the Committee on Rules and Administration, reported the following original resolution; which was placed on the calendar.

S. RES. 253

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Stephanie L. Rogers Smith, widow of Kenneth R. Smith, an employee of the Senate at the time of his death, a sum equal to six months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.